

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0301P**

**Sales & Use tax**

**For the Month of December 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late payment penalty.

II. **Tax Administration** – Interest

**Authority:** IC 6-8.1-10-1

The taxpayer protests the interest assessment.

**STATEMENT OF FACTS**

The late payment penalty and interest was assessed on the late filing of a monthly sales tax return.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the late penalty should be waived as logically the check was received by the Department on or before the filing deadline. The taxpayer shows that the check was deposited by the Department on January 31<sup>st</sup>, one day after the filing deadline. The taxpayer says that logic indicates the check would have been received by the Department at least the day before the deposit date.

The Department points out that the postmark date is January 31, 2003. Thus, the filing of the sales tax return was one day late.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.

## **II. Tax Administration – Interest**

### **DISCUSSION**

The taxpayer protests the interest assessment.

IC 6-8.1-10-1 does not allow the waiver of interest. As such, the Department finds the assessment of interest proper and denies the interest protest.

### **FINDING**

The taxpayer's interest protest is denied.